

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNEAPOLIS CITY COUNCIL

In the Matter of:

Darryl Burton,

v.

The City of Minneapolis and
Stanley Capistrant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDED
DECISION**

The above-entitled matter came on hearing before Administrative Law Judge Steve M. Mihalchick, acting as hearing officer for the Minneapolis City Council, commencing at 9:30 a.m. on September 19, 2005, at the Office of Administrative Hearings in Minneapolis, Minnesota. There was no appearance by Respondent, and no one appeared on his behalf. With the nonappearance of Respondent, the City requested that the Administrative Law Judge issue a Recommended Decision by default in accordance with Minn. Rule 1400.6000. The OAH record closed at the conclusion of the hearing on September 19, 2005.

Mike Bloom, Assistant City Attorney, 333 South 7th Street, Suite 300, Minneapolis, Minnesota 55402-2453, appeared on behalf of the City of Minneapolis.

The last known address for Respondent, Stanley Capistrant, is 896 32nd Street N.W., Hackensack, Minnesota 56452-2473.

NOTICE

This report is a recommendation and not a final decision. The Minneapolis City Council will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions of Law and Recommended Decision. The parties should contact the City Clerk, Council Information Division, 350 South Fifth Street, Room 304, Minneapolis, Minnesota 55415-1382, telephone (612) 673-3136, to learn when the City Council will consider this matter and whether the Respondent will have an opportunity to present argument to the City Council concerning this recommended decision.

STATEMENT OF THE ISSUE

The issue in this proceeding is whether or not the City of Minneapolis properly decided not to defend or indemnify the Respondent, a former Minneapolis Police Officer, under Minn. Stat. § 466.07 and Article 25 of the Labor Agreement, in connection with a matter resulting in Respondent's conviction for theft, on the grounds that the Respondent was guilty of malfeasance in office, willful neglect of duty, or bad faith.

Based upon all of the proceedings, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent, Stanley Capistrant, was employed as a police officer with the Minneapolis Police Department (MPD) from April 1990 to December 2005. He left the employment of City of Minneapolis (City) after an investigation by the MPD's Internal Affairs Unit (IAU). The IAU investigated Respondent for having signed out money from the MPD property room as "federal forfeitures" or "For the court."^[1]

2. The IAU determined that Respondent had improperly signed out the money from the property room, in the amount of \$450,970.65, and had engaged in fraud. Respondent was criminally charged due to this conduct. On September 25, 1996, Respondent pled guilty to Theft from a Program Receiving Federal Funds, and was sentenced to 30 months imprisonment, 3 years supervised release, and ordered to pay \$335,000.00 in restitution.^[2]

3. The City was served with a summons and complaint in the matter of **Darryl Burton v. City of Minneapolis and Stanley Capistrant**, MC 05-003544, filed with the Hennepin County District Court. That lawsuit seeks the return of some of the money improperly removed from the property room.^[3]

4. The City determined that Respondent was not entitled to defense and indemnification. Respondent requested a hearing, and the City issued a Notice of Hearing. The Notice of Hearing included the statement that, "If you fail to appear at the hearing, the allegations against you that have been stated earlier in this notice may be taken as true and your ability to challenge them forfeited."^[4] The Notice of Hearing set this matter on before the undersigned Administrative Law Judge to begin on July 27, 2005.^[5] The hearing was later rescheduled, at the City's request, to September 19, 2005. The City requested the later date due to the inability to reach Respondent or the Plaintiff, Darryl Burton.^[6]

5. The administrative hearing commenced on September 19, 2005. There was no appearance by Respondent, or by anyone on Respondent's behalf. The City requested that this matter be decided on the pleadings filed to that time, pursuant to Minn. Rule 1400.6000.

6. These Findings are based on all of the evidence in the record. Citations to any portion of the record are not intended to be exclusive references.

7. The Memorandum that follows explains the reasons for these Findings, and, to that extent, the Administrative Law Judge incorporates that Memorandum into these Findings.

8. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minneapolis City Council and the Administrative Law Judge have authority to consider the request for indemnification by Respondent under Minn. Stat. §§ 14.55 and 466.07 and Article 25 of the Labor Agreement between the City of Minneapolis and the Police Officers' Federation of Minneapolis.

2. The City has complied with all relevant substantive and procedural requirements of statute and rule.

3. The Respondent received timely and appropriate notice of the allegations made by the City and the time and place of the hearing. Respondent's failure to appear at the hearing in this matter constitutes a default under Minn. Rule 1400.6000. Pursuant to that rule, the allegations in the Notice of Hearing are taken as true and have been deemed proved without further evidence.

4. Article 25 of the Labor Agreement between the City of Minneapolis and the Police Officers' Federation of Minneapolis states in pertinent part as follows:

Section 25.1 – Legal Counsel. The City shall provide legal counsel to defend any employee against any action or claim for damages, including punitive damages, subject to limitations set forth in *Minnesota Statutes* §466.07, based on allegations relating to any arrest or other act or omission by the employee provided: the employee was acting in the performance of the duties of his or her position; and was not guilty of willful neglect of duty or bad faith.^[7]

5. Minn. Stat. § 466.07 specifies that, subject to certain limitations set forth in section 466.04 (relating to maximum liability limits), "a municipality or an instrumentality of a municipality shall defend and indemnify any of its officers and employees, whether elective or appointive, for damages, including punitive damages, claimed or levied against the officer or employee, provided that the officer or employee: (1) was acting in the performance of the duties of the position; and (2) was not guilty of malfeasance in office, willful neglect of duty, or bad faith."^[8]

6. The City has the burden of proof under Minn. Stat. § 466.07 to establish, by a preponderance of the evidence, that the Respondent is not entitled to defense and indemnification.

7. Respondent's conviction for theft of property entrusted to him as part of the duties of his position constitutes "malfeasance in office" under Minn. Stat. § 466.07.

8. The City has demonstrated by a preponderance of the evidence that its decision not to defend or indemnify the Respondent was proper.

9. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Minneapolis City Council affirm the decision not to defend or indemnify the Respondent, Stanley Capistrant, in connection with ***Darryl Burton v. City of Minneapolis and Stanley Capistrant***, MC 05-003544.

Dated: September 21, 2005.

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Default.

NOTICE

The City is requested to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

^[1] Notice of Hearing, at 2.
^[2] Notice of Hearing, at 2.
^[3] Notice of Hearing, at 2.
^[4] Notice of Hearing, at 3.
^[5] Notice of Hearing.
^[6] ALJ Letter, July 25, 2005.
^[7] Notice of Hearing, Attachment.
^[8] Minn. Stat. § 466.07, subd. 1.